IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/04/2003

CORAM

THE HONOURABLE MR. JUSTICE M. KARPAGAVINAYAGAM
And
THE HONOURABLE MR. JUSTICE AR. RAMALINGAM

CRIMINAL APPEAL No.590 of 2000

1. Rajendran
2. Meenakshi .. Appellants

-Vs-

State rep. by
Inspector of Police
Vrinchipuram Police Station
Vellore District. .. Respondent

Criminal Appeal against the judgment dated 28.6.200 made in S.C.No.6 6 of 1998 on the file of the Additional Sessions Judge, Vellore.

!For Appellants : Mr.K.S. Rajagoplan

^For Respondent : Mr. E. Raja,
Addl. Public Prosecutor.

:JUDGMENT

(The Judgment of the Court was delivered by
M. KARPAGAVINAYAGAM, J.)

A1 Rajendran was convicted for the offences under Sections 498-A and 302 I.P.C. His mother A2 Meenakshi was convicted for the offence under Section 498-A I.P.C. alone. Challenging the same, this appeal has been filed.

2. Originally, the accused were charged for the offences under Section 4 of the Dowry Prohibition Act and under Sections 498-A and 302 I.P.C. Ultimately, the trial Court acquitted both of them in respect of the offence under Section 4 of the Dowry Prohibition Act.

3. The brief facts leading to conviction are as follows:
"(a) Rajendran (A1) married the deceased Suguna seven years prior to the date of occurrence. Out of the wedlock, one female child and one male child were

born. At that time of occurrence, female child was aged about 2 + years and male child was 9 months old. Meenakshi (A2), the mother of A1 was also residing with them.
(b) Though initially they were happily living together, misunderstanding arose between them, when the younger sister of the deceased got married about eight months prior to the date of occurrence to whom cot and almirah were given as dowry by the parents of the deceased. Since those things were not provided to A1 at the time of their marriage, A1 husband and his mother (A2) started insisting the deceased to bring the cot and almirah from the house of her parents. This was informed by the deceased to her parents P.W.9 and P.W.10. However, they pleaded their inability to get the same immediately. Due to this, there were frequent quarrels between A1 and the deceased.

(c) On 2.11.1997, the deceased Suguna went to the opposite house and viewed a cinema in the television. She came back home late. Accusing over this act of the deceased, both A1 and A2 scolded her. The deceased went inside the room and gave milk to the child and put him in the cradle. At that time, A1 came inside and locked the room. He then took a kerosene tin and poured the same over the body of the deceased stating that she was not getting anything from her parents, despite the demand of cot and almirah and that therefore, he would kill he as she was in no way helpful to him and so stating, set fire to her with the help of a lamp. The deceased caught fire and she cried aloud. The neighbours gathered there and put out the fire. Then, the deceased was brought to the hospital by both the accused and others.

(d) P.W.13 Doctor admitted the deceased and issued wound certificate Ex.P7. She told the Doctor that she sustained burn injuries accidentally while she was cooking food in the kitchen. P.W.13 found burn injuries on the first accused and therefore, he was also admitted and wound certificate Ex.P8 was issued. To P.W.13, A1 stated that he sustained burn injuries while he tried to save his wife from the fire. Then, P.W.13 Doctor sent intimation Ex.P13 to the Police Station.

(e) On receipt of the intimation, P.W.22 Sub Inspector of Police came on 3.11.1997. He could not record the statement from the deceased as she was found unconscious. On 4.11.1997 at about 7.30 p.m., P.W.22 Sub Inspector of Police again came to the hospital and found the deceased conscious and therefore, he recorded a statement Ex.P21 from her and obtained her left thumb impression. In the said statement, she had stated that both A1 and A2 demanded cot and almirah as dowry and since the demand was not met, A1 set fire to her. P.W.22 registered a case for the offence under Section 307 I.P.C. in F.I.R.No.651 of 1 997, Ex.P15. Then, he sent Ex.P5, the requisition to P.W.11, the Judicial Magistrate to record dying declaration of the deceased. Accordingly, P.W.11, the Judicial Magistrate came to the hospital on 4.11.19 97 at 10.00 p.m. and recorded dying declaration Ex.P6 attested by Doctor P.W.12 who was present then. He obtained thumb impression of the deceased in the said dying declaration. In that dying declaration, she implicated A1 stating that he poured kerosene and set fire to her.

(f) P.W.23, the Inspector of Police, on receipt of the message sent by P.W.22 Sub Inspector of Police, rushed to the hospital and recorded another statement

Ex.P20 under Section 161 Cr.P.C. from the deceased. Thereupon, he came to the spot at about 11.30 a.m. On 5.11.1997 and prepared observation mahazar Ex.P16 and rough sketch Ex.P17. He recovered bottle lamp, plastic can, etc.(M.Os.1 to 4) from the scene of occurrence. On 7.11.1997, he received intimation that the deceased died. Therefore, he sent Express F.I.R. Ex.P14 altering the Sections into 498-A and 302 I.P.C.

(g) On 8.11.1997, P.W.23 conducted inquest over the dead body of the deceased and the inquest report is Ex.P19. Then, the dead body was sent for post-mortem. A1 and A2 were arrested on the same day.

(h) P.W.15 Doctor conducted post-mortem on 8.11.1997 at 9.30 a.m. and noticed that the deceased sustained second degree burns all over the body and issued Ex.P11, the post-mortem certificate giving opinion that the deceased would appear to have died of septicaemial shock due to 70% to 80% burns.

(i) P.W.23 Inspector of Police continued the investigation, examined the witnesses and ultimately, filed the charge sheet against both the accused for the offences under Section 4 of the Dowry Prohibition Act and under Sections 498-A and 302 I.P.C.

(j) During the course of trial, the prosecution examined 23 witnesses, filed 21 exhibits and marked 6 material objects.

(k) When the accused were questioned under Section 313 Cr.P.C., both of them stated that the deceased caught fire accidentally when she was boiling milk in the kitchen and they put out the fire and brought the deceased to the hospital and as such, they had not committed any crime whatsoever.

(l) The trial Court, on appraisal of the evidence available on record, though acquitted the accused in respect of the offence under Section 4 of the Dowry Prohibition Act, convicted A1 for the offences under Sections 498-A and 302 I.P.C. and A2 for the offence under Section 498-A I.P.C. alone. Hence, this appeal."

4.Mr.K.S.Rajagopalan, learned counsel for the appellants would take us through the entire evidence and contend that various infirmities found available in the record would go to the root of the matter, due to which, the case of the prosecution cannot be said to have been proved beyond reasonable doubt and as such, both the accused are entitled to be acquitted.

5. In reply to the above submission, Mr.E.Raja, learned Additional Public Prosecutor, while justifying the reasonings given by the trial Court in convicting the accused, would contend that the conviction can be based on the three dying declarations which have been given by the deceased to the police officers as well as to the Judicial Magistrate and as such, the conviction may be confirmed.

6. We have carefully considered the rival contentions urged by the counsel

for the parties. We have also gone through the records.

7. The prosecution mainly relies upon three dying declarations, namely (i) Ex.P21 recorded by P.W.22 Sub Inspector of Police at 8.00 p.m. On 4.11.1997, (ii) Ex.P6 recorded by P.W.11, the Judicial Magistrate at about 10.10 p.m. On 4.11.1997, and (iii) Ex.P20 recorded by P.W.23 Inspector of Police at 11.00 a.m. On 5.11.1997. According to these dying declarations, A1 husband poured kerosene over the body of the deceased and set fire to her.

8. Before adverting to the materials placed by the prosecution against the accused, it is worthwhile to refer to the principles laid down by the Supreme Court on various occasions regarding the evidentiary value of the dying declarations.

9. Though it is held in those decisions that the dying declaration alone can form the basis of conviction even without corroboration, the Supreme Court would give the following guidelines under what circumstances, the dying declaration can be acted upon:

(1) It has always to be kept in mind that though a dying declaration is entitled great weight, yet it is worthwhile to note that as the maker of the statement is not subjected to cross-examination, it is essential for the court to insist that the dying declaration should be of such nature as to inspire full confidence of the court in its correctness. The court is obliged to rule out the possibility of the statement being the result of either tutoring, prompting or vindictive or a product of imagination.

(2) The practice of the police officers recording the dying declarations except where the condition of the deceased was so precarious that no other alternative was left. Neither the number of declarations nor the length of the statement is the factor to be taken into account to rely upon them.

(3) Under the law, dying declaration can form the sole basis of conviction, if it is free from any kind of doubt. It may not be necessary to look for corroboration of the dying declaration. The court cannot be too technical. If it feels convinced about the trustworthiness of the statement which may inspire confidence such a dying declaration can be acted upon without any corroboration.

(4) Dying declarations shall have to be dealt with due care and upon proper circumspection. Though corroboration thereof is not essential as such, but its introduction is otherwise expedient to strength the evidential value of the declaration. Independent witnesses may not be available but there should be proper care and caution in the matter of acceptance of the dying declaration as a trustworthy piece of evidence.

(5) Dying declaration itself can be treated as a substantive piece of evidence and can be the basis of an order of conviction without there being any corroboration, provided the same brings forth a sense of confidence and trustworthiness in the mind of the court. The issue thus becomes as to whether the dying declaration has been able to bring about a confidence

thereon or not - is it trustworthy or is it a mere attempt to cover up the latches of investigation: it must allure to the satisfaction of the court that reliance ought to be placed thereon rather than a distrust: the confidence of the court is the summum bonum and in the event of there being any affirmation thereto in the judicial mind, question of any distrust would not arise. In the event of there being some infirmity, howsoever negligible it be, the court unless otherwise satisfied about the credibility thereof, ought to look for some corroboration, if however it is otherwise, question of requirement of a corroboration would not arise.

(6) As the investigating officers are naturally interested in the success of the investigation, the practice of the investigating officer himself recording the dying declaration during the course of the investigation should not be encouraged.

(7) Where the deceased has made two dying declarations and the statement made in one dying declaration is not consistent with the statement made in the other dying declaration, the dying declaration cannot form the basis of conviction unless it finds support from other evidence on record.

(8) The court must be satisfied that the dying declaration is truthful where the court finds that the declaration is not wholly reliable, and material and integral portion of the deceased's version of the occurrence is untrue, the court may consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration.

10. The above guidelines have been given in the decisions in RAMILABEN HASMUKHBHAI KHRISTI v. STATE OF GUJARAT (2002 S.C.C.(Cri) 1575), UKA RAM v. STATE OF RAJASTHAN (2001 S.C.C. (Cri) 847), LAXMI v. OM PRAKASH (2001 S.C.C. (Cri) 993), GIRDHAR SHANKAR TAWADE v. STATE OF MAHARASHTRA (2002 S.C.C. (Cri) 971), PANCHDEO SINGH v. STATE OF BIHAR (2002 S.C.C.(Cri) 211), MANNU RAJA v. STATE OF M.P. (A.I.R.19 76 S.C.2199), SHAMPOO ALIAS SURENDRA PRATAP SINGH v. STATE OF U.P. (1982 (UP) Cr.L.R.402) and THURUKNORI POMPIAH v. STATE OF MYSORE (A.I.R.1965 S.C.939).

11. In the light of the above well laid principles formulated by the Supreme Court, we have to evaluate the evidence on record in this case.

12. Keeping in mind the aforementioned guidelines, if we make a careful scrutiny of the materials placed by the prosecution as mentioned above, we are constrained to state that we are unable to place implicit reliance on the dying declarations which are mainly relied upon by the prosecution. Consequently, we are to conclude that the prosecution has miserably failed to prove its case, with the result, both the appellants/accused are entitled to be acquitted. The reasonings for the above conclusion are as follows:

(A) The first and foremost thing to be noted in this case is that apart from three dying declarations, the deceased had given one more dying declaration to the Doctor P.W.13. This is the earliest dying declaration. In this, she stated that she caught fire accidentally in the kitchen. She has not implicated her husband (A1).

(B) The alleged occurrence had taken place at 8.00 p.m. On 2.11.1997. She was admitted in the hospital at about 11.00 p.m. on the same day. The victim deceased was brought to the hospital by the first accused himself. This is evident from Ex.P7 wound certificate relating to the deceased and the oral evidence given by P.W.13, the Doctor. According to Doctor P.W.13, he sent intimation to the police about the admission of both A1 and the deceased in the hospital on 2.11.1997 itself. The same was received by the Out-post Police Station by Constable P.W.18, at about 11.15 p.m. on the same day.

But, P.W.22 Sub Inspector of Police came to the hospital only on 4.11.1997 and recorded the statement from the deceased at about 7.30 p.m. Ex.P21 is the complaint and Ex.P15 is the F.I.R.

(C) There is no proper explanation given by P.W.22 Sub Inspector of Police for having recorded the statement of the deceased belatedly, i.e. on 4.11.1997 at about 7.30 p.m., even though intimation Ex.P13 relating to the admission of A1 and the deceased was received by the Out-post Police Station at11.15 p.m. On 2.11.1997 itself. In order to explain the delay, P.W.9 and P.W.10, viz., mother and father of the deceased were made to say that till the Sub Inspector of Police comes and records Ex.P21, the deceased was unconscious.

(D) In support of the said evidence given by P.W.9 and P.W.10, P.W.22 Sub Inspector of Police deposed in his evidence that he received intimation Ex.P13 only on 3.11.1997 at about 5.00 p.m. and then came to the hospital at about 7.30 p.m. and at that time, deceased was found unconscious and that therefore, he could not record the statement from the deceased immediately. He would further state that he was informed by Out-post Police Station that the deceased regained consciousness only at 6.00 p.m. On 4.11.1997 and therefore, he came to the hospital and recorded Ex.P21, the statement of the deceased at about 8.00 p.m.

(E) In brief, it is the case of the prosecution that P.W.22 Inspector of Police though received the intimation about her admission in the hospital on 3.11.1997 itself, was not able to record her statement because she was unconscious throughout till 6.00 p.m. On 4.11.1997. This evidence giving explanation for belated recording is quite contradictory to the evidence of Doctors P.W.12 and P.W.13. As a matter of fact, P.W.13 Doctor who admitted the deceased at about 11.00 p.m. on 2.11.1997 would clearly mention in Ex.P7 wound certificate that the victim deceased was conscious and she told him that she sustained burn injuries while she was cooking. In consonance with the contents of Ex.P7, P.W.13 also would state in his deposition that the deceased was conscious and the entry made in Ex.P7 relating to the cause of the injury was only based on the statement of the deceased herself.

(F) P.W.12, another Doctor never stated that she was unconscious. In fact, P.W.12 would state that she joined the duty on 4.11.1997 at about 1.30 p.m. And even at that time, the deceased was conscious. On the contrary, the evidence of P.W.22 would show that the deceased regained consciousness only at 6.00 p.m. on 4.11.1997 and the said information was conveyed to him through Out-post Police Station.

(G) This also is contradictory to the evidence of P.W.10 who stated that on 4.11.1997 evening, after noticing that the deceased regained consciousness, he only went to the police station and conveyed the same to the police. If the medical evidence adduced by P.W.12 and P.W.1 3 that the deceased was conscious throughout is accepted, then the evidence of P.W.9, P.W.10 and P.W.22 that the deceased was unconscious till 6.00 p.m. on 4.11.1997 cannot be true. Therefore, the explanation for recording complaint from the deceased belatedly is false.

(H) This aspect could be viewed from yet another angle. There is no dispute in the fact that P.W.13 has sent intimation about the admission of both deceased and A1 with burn injuries in the hospital and the same was received by the Out-post Police Station on 2.11.1997 at about 11.15 p.m. itself and the said news was conveyed to P.W.22 on 3.11 .1997. When both A1 and the deceased were admitted in the hospital with burn injuries, there would have been no difficulty for P.W.22 Sub Inspector of Police, who came to the hospital to record the statement of the husband of the deceased, who was in the next bed to the deceased, to know as to what actually happened. There is no explanation for the failure on the part of P.W.22 in recording the statement of the husband of the deceased. It is also noticed from the evidence of P.W.22 that he had not cared to examine the Doctors who were on duty either on 3.11.1997 or on 4.11.1997. To make the matters worse, P.W.9 and P.W.10, viz., the parents of the deceased, who speak about the motive, were very much available with the deceased throughout. P.W.22 could have very well received a complaint either from P.W.9 or from P.W.10 and registered a case on the basis of the same. According to P.W.22, no such statement has been obtained from them. No explanation has been put forth for this flaw.

(I) Another preposterous feature to be noticed in this case is that P.W.9, the mother of the deceased, would admit in the crossexamination that P.W.22 obtained a statement from the deceased and the said statement was attested by the Doctor who was present then and also by P.W.9 and P.W.10. P.W.10 also would state that P.W.22 Sub Inspector of Police obtained a statement from P.W.9 and P.W.10, which was reduced into writing and the same was signed by both of them. It has been further admitted by P.W.10 in the cross-examination that the occurrence had taken place on Sunday and next day, i.e. on Monday, P.W.22 Sub Inspector of Police recorded the complaint from P.W.9 and P.W.10 and in that document, signatures were obtained from them by P.W.22. But according to P.W.22 Sub Inspector of Police, he came to the hospital and recorded statement from deceased only and at that time, Doctor was not present.

(J) If the evidence of P.W.9 and P.W.10 to the effect that the statement recorded from the deceased by P.W.22 Sub Inspector of Police was attested by the Doctor and P.W.9 and P.W.10, and one another complaint was obtained from P.W.9 and P.W.10 is true, then the question that arises is what happened to those complaints which were received by P.W.22 Sub Inspector of Police. If we rely upon the evidence of P.W.9 and P.W.10, the parents of the deceased , it is clear that the statement of the deceased, attested by the Doctor and the complaint obtained from P.W.9 and P.W.10 have been suppressed. This apparent infirmity, in our view, would go to the root of the matter affecting the

substratum of the prosecution.

(K) According to P.W.9 and P.W.10, the parents of the deceased came to the hospital as soon as they received information that their daughter was admitted in the hospital with burn injuries. They admit in the cross-examination that A1 was also found with burn injuries and he was also admitted in the hospital lying in the next bed to the deceased. A2 was also present attending both of them. If that was so, P. W.9 and P.W.10 would have very well enquired both A1 and A2 as to how the deceased sustained burn injuries. Curiously, P.W.9 and P.W.10 would admit in their cross-examination that they had not enquired both A1 and A2 at all. The conduct on the part of P.W.9 and P.W.10 in not enquiring the reason for the burn injuries sustained by both A1 and the deceased, in our view, is utter artificial.

(L) The earliest document in this case is Ex.P7 wound certificate issued by P.W.13 Doctor relating to the victim deceased. As per Ex.P7 and the evidence of P.W.13 Doctor, the deceased sustained injuries accidentally while she was cooking. The evidence of P.W.13 would make it further clear that the first accused also came with burn injuries and he stated to the Doctor P.W.13 that he sustained burn injuries while making an attempt to save the life of the deceased who caught fire. This is evident from Ex.P8 wound certificate issued in respect of the injuries sustained by A1. These Exs.P7 and P8 were recorded by P.W.13 at about 11.00 p.m. and 11.10 p.m. Respectively on 2.11.1997. Only after two days, i.e. on 4.11.1997, P.W.22 Sub Inspector of Police comes and records statement Ex.P21 from the deceased.

(M) A perusal of Ex.P21 would indicate that the deceased was able to give more details about the motive and the manner of occurrence in which she sustained burn injuries. As per Ex.P21, which was recorded by P.W.22 at 8.00 p.m. On 4.11.1997, the deceased went to the opposite house to view cinema in the television and then came back to the house late and at that time, both A1 and A2 scolded her using abusive words and thereafter, A1 came inside and locked the house from inside and poured kerosene and set fire to her. It is further stated in Ex. P21 that he opened the lock and then pulled the deceased and pushed her outside and thereafter, the neighbours and others put out the fire. As indicated above, this was recorded at 8.00 p.m. On 4.11.1997.

(N) Admittedly, Ex.P21 has not been attested either by the Doctor or by the parents of the deceased, P.W.9 and P.W.10, who were throughout. Immediately thereafter, P.W.22 Sub Inspector of Police sent requisition Ex.P5 to P.W.11, the Judicial Magistrate requesting him to come to hospital and to record dying declaration. Finding that the deceased was in a precarious condition, he had chosen to request the Judicial Magistrate to come and record the dying declaration. But, it is noticed from the evidence that he had not chosen to enquire any Doctor who was in charge of the Ward as to her health condition in order to decide whether dying declaration is necessary or not. Then, how he took a decision to send a requisition to Judicial Magistrate to record the dying declaration of the deceased? If P.W.22 felt that the deceased was in a precarious condition, he must have obtained a statement in the presence of the

Doctor. That was not done. Curiously, P.W.12 Doctor would state that before recording dying declaration by the Judicial Magistrate P.W.11, no Officer was allowed to record any statement from her. From this, it is evident that P.W.22 Sub Inspector of Police would not have come to the hospital at the relevant time and recorded Ex.P21, which is admittedly not attested either by the Doctor or by P.W.9 and P.W.10, who were present in the Ward.

(O) As per the requisition Ex.P5, P.W.11, the Judicial Magistrate came to the hospital and recorded Ex.P6 from the deceased at about 10.10 p.m. This was attested by P.W.12 Dr.Bhuvaneswari, who was in charge of the Ward at the relevant time. Thereafter, P.W.23 Inspector of Police on receipt of the message that a case was registered for the offence under Section 307 I.P.C., on the basis of Ex.P21, the statement given by the deceased, took up investigation and came to the hospital on 5.11.1997 and recorded Ex.P20, yet another statement under Section 161 Cr.P.C. from the deceased. Strangely, this statement also has not been attested either by the Doctor or by P.W.9 and P.W.10.

(P) Having felt that the deceased was in a dangerous condition and having decided to request the Judicial Magistrate to record the dying declaration, no reason was given either by P.W.22 or by P.W.23 as to why they did not take steps to record the statements, namely Exs.P21 and P20 in the presence of the Doctors, who could alone state the mental condition of the deceased to make a statement.

(Q) A perusal of Ex.P21 recorded at 8.00 p.m. on 4.11.1997 and Ex.P20 recorded at 11.00 a.m. on 5.11.1997 would reveal that there are several variations with reference to the manner of occurrence.

(R) P.W.9 and P.W.10 would state that they were present when the deceased gave a statement to P.W.22 Sub Inspector of Police and in that statement Ex.P21, the deceased told P.W.22 that A1 and A2 set fire to her. But in Ex.P21, though more details about the scolding by both A1 and A2 have been given, it is stated that A1 alone set fire to her.

(S) Having given so much of details in Ex.P21 recorded at about 8.00 p.m. on 4.11.1997, the deceased did not choose to give those details in Ex.P6 while the same was recorded by P.W.11, the Judicial Magistrate at about 10.10 p.m. on the same date. Curiously, she has simply stated in Ex.P6 that "A1 set fire to her at 8.00 p.m. on Sunday" (@" hapw;Wf;fpHik ,ut[vl;L kzpf;F vd; tPl;Lf;fhuh; kz;bzz;bza; Cw;wp bfhSj;jptpl;lhh;@). But in the next statement Ex.P20, which was recorded by P.W.23 at 11.00 a.m. on 5.11.1997, nitty gritty details giving further particulars about the motive, including the conduct of A1 who is said to have got some sexual connection with one other lady, have been given. In short, the perusal of both the detailed statements, namely Exs.P21 and P20 recorded by P.W.22 and P.W.23 respectively, would make it obvious that these documents could not have been prepared at the relevant time.

(T) It is the evidence of P.W.9 and P.W.10 that they were with the deceased throughout from 2.11.1997 till the death of the deceased on 7.11.1997. P.W.12

Doctor would also admit that while the Judicial Magistrate was recording the dying declaration Ex.P6, relatives of the deceased were present in the Ward. Under those circumstances, we are of the view that there were ample opportunities for the parents of the deceased to influence the mind of the deceased to implicate A1 and A2 through her dying declarations and as such, it cannot be concluded that three dying declarations which were belatedly recorded were voluntary and true.

(U) At the end, it would be appropriate to evaluate the evidence on motive aspect also. According to the prosecution, the motive for the occurrence is that the parents did not meet the demands of A1 and A2 for cot and almirah, even though similar articles were given to the younger sister of the deceased at the time of her marriage and therefore, the deceased was tortured by A1 and A2. As per Exs.P20 and P21, the dying declarations recorded by P.W.22 and P.W.23, the immediate motive for the occurrence is that the deceased went to opposite house and saw cinema in the television and came back home late in the night and on getting angry over this, A1 poured kerosene and set fire to her body. Though several witnesses had been examined including P.W.4 to whose house, the deceased went to see cinema in the television, all those witnesses have turned hostile.

(V) As indicated above, the trial Court acquitted both the accused in respect of Section 4 of the Dowry Prohibition Act on the ground that there was no demand for dowry. The charge under Section 498-A was framed against both the accused only on the basis of same allegation, namely demand of dowry. However, the trial Court concluded that there was a harassment and torture for this reason. This finding, in our view, cannot be said to be correct in view of the fact that even according to P.W.9 and P.W.10, both the accused themselves came to their house and requested them to send their daughter with them to celebrate Deepavali. It is not the case of the prosecution that both the accused insisted P.W.9 and P.W.10 for dowry in the form of cot and almirah etc. and unless the same is given, they would not take the deceased back home.

(W) In this context, we may also consider the defence case. On going through the cross-examination of all the witnesses and suggestion put by the accused to those witnesses and the statement given by them under Section 313 Cr.P.C., the consistent defence is that the deceased caught fire while she was boiling milk in the kitchen. This gets support from Ex.P7, and the evidence of P.W.13 Doctor.

(X) In such circumstances, it cannot be said that A1 poured kerosene and set fire to the body of the deceased for the purpose of killing her. If the intention of the first accused was to kill her by pouring kerosene, there was no necessity for him to take the victim deceased to the hospital. Admittedly, A1 also sustained 20% burn injuries. It is seen from Ex.P8 that he was admitted on 2.11.1997 and he was discharged only on 28.11.1997. Thus, he was hospitalised for more than 25 days for curing the burn injuries sustained by him. This also would make it clear that the accused would not have committed this act for the purpose of murdering her. It is quite probable for the deceased to sustain burn injuries while she was cooking as stated before the

Doctor P.W.13.
(Y) Under those circumstances, the prosecution has failed to prove its case beyond all reasonable doubts. Therefore, we are of the view that the conviction and sentence imposed upon both the appellants/ accused is not legal and the same is liable to be set aside.

13. In fine, the appeal is allowed setting aside the conviction and sentence imposed upon the appellants/accused. The appellants are acquitted of the charges. The first appellant (A1) is directed to be set at liberty forthwith, unless he is required in connection with any other case. The bail bond executed by A2 stands cancelled. Fine amount, if paid, shall be refunded.

Index :Yes
Internet:Yes

kpl/mam

To
1) The Additional Sessions Judge, Vellore.
2) -do- the Principal Sessions Judge, Vellore.
3) The Superintendent, Central Prison, Vellore.
4) The Public Prosecutor, High Court, Madras.
5) The Inspector of Police, Virinchipuram Police, Station, Vellore Dist.
6) The District Collector, Vellore.
7) The Director General of Police, Chennai.